OLR Bill Analysis

sSB 1138 (as amended by House "A" and Senate "A" and "C")*

AN ACT CONCERNING CONNECTICUT'S CLEAN ENERGY GOALS.

SUMMARY:

This bill modifies the state's renewable portfolio standard (RPS), which requires electric companies and competitive suppliers to get part of their power from renewable resources. Among other things, it:

1. expands the types of resources that count as Class I resources used to meet part of the RPS and

2. requires that the value of renewable energy credits (RECs) associated with certain biomass facilities be reduced. (Suppliers and companies use RECs to meet their RPS obligations.)

The bill also allows the Department of Energy and Environmental Protection (DEEP) commissioner to (1) solicit proposals from class I and large-scale hydropower generators and (2) direct the electric companies to enter into agreements with them, subject to review and approval by the Public Utilities Regulatory Authority (PURA). It allows large scale hydropower to count towards the RPS under certain conditions.

The bill requires that PURA determine whether a supplier or company has met its RPS obligations in an uncontested, rather than contested, proceeding. It requires PURA, by December 31, 2013, to issue a decision on those proceedings for calendar years through 2012 that have not already been issued. It requires that subsequent determinations be made by December 31, 2014 and annually thereafter.

By law, if a supplier or company does not meet its RPS obligations, it must make an alternative compliance payment (ACP). Under current law, ACP revenues must go to the Clean Energy Finance and

Investment Authority to develop new Class I resources. The bill instead requires that these revenues be used to reduce electric rates.

*Senate Amendment "A" among other things:

1. requires that the value of RECs associated with certain biomass facilities be reduced, rather than establishing additional emission criteria for these facilities;

2. maintains the current RPS targets, rather than increasing the targets and establishing a new type of resources, including large scale hydropower, eligible for the RPS;

3. modifies when small scale hydropower counts as a Class I resource;

4. adds the request for proposals for specified Class I resources;

5. allows large scale hydropower to count towards the RPS only under specified circumstances; and

6. requires ACP revenues to be used to reduce electric rates.

*Senate Amendment "C" requires PURA to hold a hearing in reviewing the results of one of the three requests for proposals.

*House Amendment "A" (1) reduces, from 20 to 15 years, the maximum term of contracts with large scale hydropower facilities; (2) limits the amount of power that can be purchased under the RFP from such facilities and Class I resources to 5% of the state's electric demand; (3) requires an additional RFP before any power purchased from large scale hydropower facilities can count against the RPS; (4) limits the RFP for designated Class I resources to 4% of the state's electric demand but eliminates a 10-year maximum contract term; (5) expands the factors that DEEP must consider as part of this RFP; (6) requires PURA to determine whether a company or supplier has met its RPS obligation in an uncontested proceeding and requires it to issue a decision by December 31, 2013 on any outstanding determinations; and (7) makes minor related changes.

EFFECTIVE DATE: Upon passage

§§ 1-3, 5 — WHAT COUNTS AS A RENEWABLE RESOURCE

Under the RPS, electric companies and suppliers must obtain part of their power from (1) Class I resources, such as wind and solar power; (2) either Class I or Class II resources (e.g., power from resource recovery facilities); and (3) Class III resources (e.g., power from cogeneration facilities or savings from certain energy conservation programs). They meet their obligations by buying RECs on the regional market, which can be sold separately from the power generated by these resources, and rights to the facilities' generating capacity. (Capacity rights are analogous to an attorney's retainer, while power rates are analogous to his or her hourly rate.)

§ 1 — Hydropower

The bill expands the scope of Class I resources with regard to hydropower facilities. To be eligible under current law, a facility must be run-of-river and have a capacity of up to 5 megawatts (MW) and may not cause an appreciable change in the river flow. The bill increases this limit to 30 MW and eliminates the requirement that the facility not cause an appreciable change in the river flow. However, for all facilities that apply for certification as Class I resources after January 1, 2013, the facility may not be on a (1) new dam or (2) dam the commissioner has identified as a candidate for removal. In addition, such facilities must meet applicable state and federal requirements, including applicable site-specific standards for water quality and fish passage.

§§ 3, 5 — Biomass

RECs for Biomass Facilities. The bill requires the DEEP commissioner, by January 1, 2014, to establish a schedule gradually reducing REC values for biomass or landfill methane gas facilities that qualify as Class I resources, other than anaerobic digestion or other biogas facilities. He must do this in developing or modifying the integrated resources plan. The commissioner may review the schedule in preparing each subsequent integrated resources plan and make any necessary changes to it to ensure that the rate of reductions is

appropriate given the availability of other Class I resources. The schedule takes effect on January 1, 2015.

The reduction does not apply to any biomass or landfill methane gas facility that has entered into a power purchase agreement (1) with an electric supplier or electric company in the state by the bill's passage date or (2) that is executed under the request for proposals described below.

Eligible Biomass Facilities. The bill narrows the types of facilities where certain types of biomass can be used to produce power that counts as a Class I resource. By law, certain types of biomass, such as construction and demolition waste and finished products from sawmills, generally do not count as sustainable biomass, and the power they produce does not count as a Class I resource. But, under current law, these types of biomass can be used in four types of facilities:

1. those that received funding from the Clean Energy Fund before May 1, 2006;

2. those that have long-term contracts with electric companies under the Project 150 program;

3. facilities that meet specified requirements, until the plants identified in category 1 go into operation; or

4. if no facilities in categories 1 or 3 are accepting such biomass, other facilities that meet different criteria.

The bill eliminates the second two exceptions, limiting the eligibility to use biomass such as construction and demolition wood to facilities in the first two categories. By law, biomass facilities that do not meet the Class I criteria, but meet other criteria, are considered Class II resources.

§ 1 — Class I Provisions

The bill classifies as Class I resources (1) electricity from geothermal

resources and (2) thermal electric direct energy conversion from a certified Class I resource. By law, methane gas from landfills is a Class I resource; the bill additionally includes other biogas derived from biological processes, such as anaerobic digestion.

Starting January 1, 2014, the bill makes electrical generation from Class I resources ineligible to count towards Connecticut RPS if a load-serving entity (e.g., an electric company), province, or state claims or counts it to comply with another state's RPS or renewable energy goals. Most of the states in the northeast have an RPS; Vermont has renewable energy goals.

§ 2 — Class III

The bill limits the types of resources that count as Class III. Under current law, these resources are the (1) energy produced by certain cogeneration or waste heat recovery facilities and (2) electric savings produced by conservation programs that began on or after January 1, 2006. Starting January 1, 2014, the bill restricts eligibility to those resources that have not received support from ratepayers. However, this provision does not apply to demand-side management (conservation) projects awarded a contract under an existing program, which continue to count as Class III resources for the term of the contract.

§§ 6-8 — REQUESTS FOR PROPOSALS

§ 6 — New Class I Facilities

Starting January 1, 2013, the bill allows the DEEP commissioner to solicit proposals from providers of Class I renewable energy sources built on or after January 1, 2013. He must do this in conjunction with the (1) state official who procures power for the standard service that electric companies provide to customers who have not chosen competitive suppliers, (2) Office of Consumer Counsel (OCC), and (3) attorney general (AG). He may do this in coordination with other New England states.

If the commissioner finds the proposals are (1) in ratepayers' interest and (2) consistent with the policy goals outlined in the

Comprehensive Energy Strategy and the state's goals to reduce greenhouse gas emissions, he may select proposals to serve up to 4% of power distributed by the electric companies. He may direct the electric companies to enter into agreements for up to 20 years with the providers. The agreements must be for energy, generating capacity, and environmental attributes (e.g., the RECs used to comply with the RPS), or any combination of them. The agreements are subject to PURA review and approval. A review must start when an agreement is filed with PURA. If PURA does not issue a decision within 30 days, the agreement is deemed approved.

The RECs that are bought under the agreements must be sold in the regional market to be used by suppliers and electric companies to meet their Connecticut RPS requirements.

The net costs of the agreements must be recovered through a fully reconciling component of electric rates for all of the electric companies' customers. These costs may include reasonable costs incurred by electric companies under this provision.

§ 7 — Class I and Large Scale Hydropower

The bill also allows the commissioner, starting July 1, 2013, in conjunction with the procurement official, OCC, and the AG, to solicit proposals from providers of Class I resources built before January 1, 2013 or large-scale hydropower. The bill defines the latter as any hydropower that:

1. began operation on or after January 1, 2003;

2. is in the area that is eligible to participate in the New England REC market (New Brunswick, New England, New York state, and Quebec) or an area abutting the northern boundary of this area that is not connected with any other control area (e.g., Labrador and Newfoundland);

3. delivers power into the New England REC market area; and

4. has a generating capacity of more than 30 megawatts.

To be eligible, hydropower must be "verifiable," which the bill does not define. The commissioner can conduct the solicitation in coordination with other New England states.

If the commissioner finds the proposals meet certain conditions, he may direct the electric companies, on behalf of all their customers, to enter into agreements for energy, capacity and environmental attributes, or any combination of them, for periods of no more than 20 years (15 years for large scale hydropower). The conditions are that the proposals be:

1. in ratepayers' interest,

2. consistent with the (a) policy goals outlined in the Comprehensive Energy Strategy and (b) state's goals to reduce greenhouse gas emissions, and

3. in accordance with the state's energy policy goals.

The latter include such things as peak load shaving and the promotion of wind, solar, and other renewable energy technologies. The commissioner may select proposals that meet these conditions to meet up to 5% of the load distributed by the electric companies.

PURA must (1) hold a public hearing and (2) review and approve any agreement within 60 days after receiving it.

The RECs that are bought under the agreements must be sold in the regional market to be used by suppliers and electric companies to meet their Connecticut RPS requirements.

The net costs of the agreements must be recovered through a fully reconciling component of electric rates for all electric company customers. These costs may include the reasonable costs incurred by the electric companies under this provision.

§ 8 — Specified Class I Resources

The bill allows the DEEP commissioner, on or after October 1, 2013, to solicit proposals from providers of Class I run-of-the-river

hydropower, landfill methane gas, or biomass resources for up to 10 years. He must do this in conjunction with the procurement official, OCC, and the AG.

If the commissioner finds the proposals meet certain conditions, he may direct the electric companies to enter into agreements for energy, capacity and environmental attributes, or any combination of them, to meet up to 4% of the load distributed by the electric companies. The commissioner, in reviewing proposals, must consider:

1. whether the proposal is in ratepayers' interest, including the delivered price for the energy and other products;

2. the facility's emissions profile and any investments made to improve its emissions profile;

3. the length of time a facility has received RECs;

4. any positive impacts on the state's economic development; and

5. if the proposal is consistent with the (a) policy goals in the Comprehensive Energy Strategy and (b) the state's goals to reduce greenhouse gas emissions.

PURA must review and approve any agreement within 60 days after receiving it.

The RECs that are bought under the agreements must be sold in the regional market to be used by suppliers and electric companies to meet their Connecticut RPS requirements. The net costs of the agreements must be recovered through a fully reconciling component of electric rates for all electric company customers. These costs may include the reasonable costs incurred by the electric companies under this provision.

§ 9 — ALLOWING LARGE SCALE HYDROPOWER TO COUNT TOWARDS THE RPS

By law, if an electric company or competitive supplier does not meet its RPS obligation, it must make an alternative compliance (ACP) of 5.5

cents for each kilowatt-hour of its shortfall.

Under the bill, if in 2014 or any subsequent calendar year, a company or supplier makes an ACP, there is a presumption for the calendar year in which the payments are made that there is an insufficient supply of Class I renewable energy sources to comply with the RPS. If this presumption applies, the DEEP commissioner may determine whether the payments resulted from a material shortage of Class I resources. In making this determination, he must consider whether the payments resulted from intentional or negligent action by a supplier or electric company to purchase RECs available in the market.

If the commissioner finds that the payments were due to a material shortage of Class I resources, he must determine the actual or potential adequacy of Class I resources to meet the RPS in the following year. In making this determination, he may consider the:

1. future cost and availability of REC certificates in the New England market based on the status of projects under development in the region,

2. future requirements of certificates issued in this market, and

3. projected compliance costs of Class I resources.

If (1) the presumption applies and (2) the commissioner finds a material shortage of Class I renewable energy sources, in addition to determining the future adequacy of such resources, he must solicit proposals from Class I providers that are operational when the solicitation is issued. He must do so in consultation with the procurement manager, OCC, and the A G.

If the commissioner, in consultation with the procurement manager, finds the proposals (including the delivered price) to be in ratepayers' interest and consistent with the state's greenhouse gas emissions reduction goals and the policy goals in the Comprehensive Energy Strategy, the commissioner, in consultation with the procurement

manager, may select proposals to fill the identified shortage. The commissioner must direct the electric companies to enter into power purchase agreements for energy, capacity and environmental attributes, or any combination, from the selected proposals for periods of up to 10 years. The purchased Class I RECs must be sold in the regional REC market to be used by any supplier or electric company to meet its RPS obligations.

The agreements are subject to review and approval by PURA, which must begin when the signed agreements are filed with it. PURA must issue a decision on an agreement within 30 days of its filing, if it does not, the agreement is considered approved.

The net costs of the agreements must be recovered through a fully reconciling component of electric rates for all customers of electric companies. These costs may include reasonable costs incurred by electric companies.

If the presumption applies and the commissioner finds (1) a material shortage of Class I resources and (2) an inadequacy of future Class I resources, on or after January 1, 2016, he may allow up to one percentage point of the Class I RPS for following calendar years to be satisfied by large-scale hydropower procured under the bill. The RPS is thus reduced by not more than one percentage point in proportion to the commissioner's action. But (1) the commissioner may not allow a total of more than five percentage points of the Class I RPS to be met by large-scale hydropower by December 31, 2020 and (2) the large-scale hydropower may not participate in the New England REC market. (This provision presumably applies only to the power sold in Connecticut.)

§§ 10, 11 — USE OF ACP REVENUES

Under current law, ACP revenues must go to the Clean Energy Finance and Investment Authority to develop new Class I resources. The bill instead requires that these revenues be used to offset existing ratepayer costs. Specifically, the bill requires, starting January 1, 2014, that these payments be first refunded to ratepayers by using them to

offset the costs to all customers of electric companies of the costs of long-term contracts with zero- and low-emission renewable energy generators under two existing programs. Any remaining amount must be applied to reduce the costs of contracts under another existing program. If any amount remains, it must be applied to reduce costs collected through non-bypassable, federally mandated congestion charges on electric bills.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute
Yea 16 Nay 8 (03/21/2013)